IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8792 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJU AMBALAL RATHOD (PARMAR)

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR.UDAY BHATT, Ld. AGP for Respondents.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 1st July, 2000 (Annexure - A) passed by the respondent No.2 with respect to detenu - Raju Ambalal Rathod (Parmar) in exercise of his powers conferred upon him under section 3(2) of the Gujarat Prevention of

Antisocial Activities Act, 1985 (in short "the Act").

2. As per the papers of grounds of detention, the petitioner-detenu is "a bootlegger" within the meaning of section 2(b) of the Act, and further that activities of the petitioner are prejudicial to the maintenance of the public health.

3. Before passing an order of detention, for arriving at a subjective satisfaction, the detaning authority has placed reliance on three Prohibition Cases which are referred to in the grounds of detention. The detaining authority has also placed reliance on statements of three anonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. That three statements were verified by the detaining authority on 17/06/2000 and ultimately, the order of detention dated 01/07/2000 came to be passed, against the detenu which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging an order of detention which is the subject matter of this writ petition.

5. Mr.M.M.Tirmizi, learned advocate for the petitioner has argued that the petitioner made a representation dated 26/06/2000 to The Hon'ble Home Minister, State of Gujarat, Sachivalaya, Gandhinagar. Though representation has been received by the Office of the Home Minister, it has not yet been considered and decided by the concerned authority and, therefore, there is a delay in not considering the representation. Merely, there is a delay it will not vitiate the order. The delay is required to be explained for not deciding said representation. Herein this case, none of the respondents has filed an affidavit-in-reply for explaining this delay. Therefore, this delay has vitiated the order. Mr.Tirmizi, learned advocate for the petitioner has relied on an authority of HARISH PAHWA Vs. STATE OF U.P. AND OTHERS, reported in AIR 1981 S.C. 1126, wherein it has been held that it is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision

is taken and communicated to the detenu. Thus, present case falls within the four corners of the case of Harish Pahwa Vs. State of U.P. and others (Supra) cited by the learned advocate for the petitioner.

6. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 01/07/2000 passed by respondent No.2 with respect to detenu is set aside. The detenu is ordered to be released forthwith if he is not wanted in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H. H. Mehta,J.)
(vijay)